



WRITTEN STATEMENT OF

ALAN KORN,

DIRECTOR OF PUBLIC POLICY &

GENERAL COUNSEL,

SAFE KIDS USA

ON

THE CONSUMER PRODUCT SAFETY MODERNIZATION ACT

OF 2007

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House Energy and Commerce
Subcommittee on Commerce, Trade and Consumer Protection

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My name is Alan Korn, and I am the Director of Public Policy and General Counsel for Safe Kids USA, a member country of Safe Kids Worldwide. Safe Kids thanks the House Commerce, Trade and Consumer Protection Subcommittee, and in particular Chairman Rush and Ranking Member Stearns for holding a hearing on the *Consumer Product Safety Modernization Act of 2007* and ways to improve the overall operations of the U.S. Consumer Product Safety Commission (CPSC).

I. History of Safe Kids Worldwide

Safe Kids Worldwide is the first and only international organization dedicated solely to addressing an often under recognized problem: ***More children ages 14 and under in the U.S. are being killed by what people call “accidents” (motor vehicle crashes, fires, drownings and other injuries) than by any other cause.*** Formerly known as the National SAFE KIDS Campaign, Safe Kids Worldwide unites more than 450 coalitions in 16 countries, bringing together health and safety experts, educators, corporations, foundations, policymakers and volunteers to educate and protect families against the dangers of accidental injuries.

Founded in 1987 by the Children’s National Medical Center and with support from Johnson & Johnson, Safe Kids Worldwide and its member country, Safe Kids USA, relies on developing injury prevention strategies that work in the real world – conducting public outreach and awareness campaigns, organizing and implementing hands-on grassroots events, and working to make injury prevention a public policy priority.

The ongoing work of Safe Kids coalitions reaching out to local communities with injury prevention messages has contributed to the more than 40 percent decline in the childhood unintentional injury death rate during the past 15 years in the U.S. However, with more children dying from accidental injury than from cancer, heart disease and birth defects, Safe Kids Worldwide and its member countries remain committed to reducing unintentional injury by implementing prevention strategies and increasing public awareness of the problem and its solutions.

II. The Problem: Accidental Childhood Injury

Accidental injuries are a leading cause of death for all Americans, regardless of age, race, gender, or economic status. Annually, an average of 27,100 deaths and over 33.1 million injuries are related to consumer products (although these are not necessarily caused by consumer products). Unfortunately, children make up a large portion of these tragic numbers. Each year, more children ages 14 and under die from unintentional injuries than from all childhood diseases combined. More than 5,300 children ages 0 – 14 die and there are over 6 million injuries serious enough to require medical care due to unintentional injury.

III. *The Consumer Product Safety Modernization Act of 2007*

In light of the recent news coverage surrounding the CPSC and product recalls, Safe Kids believes this is the perfect opportunity to address children's product safety on a comprehensive basis. Accordingly, Safe Kids applauds Committee Chairman Dingell, Subcommittee Chairman Rush, Committee Ranking Member Barton and Subcommittee Ranking Member Stearns, for sponsoring the *Consumer Product Safety Modernization Act of 2007*. We believe this bill is an excellent legislative framework to not only remedy the CPSC's abysmal budget, but to also rejuvenate this important federal agency that has not been reauthorized since 1990. Safe Kids supports many of the provisions contained in the *Consumer Product Safety Modernization Act of 2007*:

A. Increasing the CPSC's General Budget

Safe Kids is particularly pleased that the *Consumer Product Safety Modernization Act of 2007* would dramatically increase the Agency's current operating budget to a sufficient level in order for it to properly fulfill its mission. The CPSC monitors the safety of over 15,000 types of consumer products, including kitchen appliances, sporting equipment, safety devices, home furnishings and art materials, and is charged with an enormous responsibility to keep families safe from injury and death. The CPSC must regulate consumer products, recall them when necessary, educate the public about safe use and behavior, and stay current on new injury product trends.

Given its historically small budget and large statutory mandate, the CPSC has often been effective over the years, but could do much more with additional resources. The *Consumer Product Safety Modernization Act of 2007* provides those resources by providing \$270 million from FY 2009 to FY 2011 – a dramatic increase over current levels. Safe Kids believes this infusion of funds is single-handedly the most important reform in the legislation and we applaud the bill's sponsors for arming the CPSC with appropriate resources in order for it to properly serve its critical mission. We do note, however, that the House version of a CPSC reform bill includes an authorization of an increase in funds for three years while the Senate companion legislation is an authorization for seven years. Clearly a seven year authorization is preferable in that it provides more funding stability to the Agency and gives it the opportunity to better

strategically plan for the future. Nonetheless, the House bill's infusion of funds is much needed and will certainly help the Agency serve its critical mission.

In addition, salaries for staff represent the largest portion of the CPSC's budget. However, the CPSC has gradually had their staffing levels reduced over the years due to budget constraints. This has resulted in fewer and fewer CPSC staff members to carry out the Agency's increasing responsibilities to keep children and families safe from defective and hazardous products. Not only has the Agency lost personnel over the years, but, significantly, the CPSC has lost key staff members through attrition who had in-depth experience and deep institutional knowledge. This is now the time to re-invest in staffing the Agency so that the CPSC, over time, will have an effective team with historical knowledge that can keep up with the fast-changing consumer product marketplace. Safe Kids recommends that at least a portion of the increase in the Agency's budget be used to augment the staffing levels at the CPSC.

B. Dedicated Funds for Labs

Safe Kids also supports the legislation's separate authorization to upgrade the Agency's dilapidated laboratory. This will ensure that the CPSC can accomplish this important task without having to make any difficult decisions about what should be prioritized in the new budget. In addition, having specific amounts of money authorized for the lab sends the important message that this is, in Congress' view, a priority task for the CPSC.

Safe Kids has consistently advocated for an upgrade to the CPSC's lab facilities. In the past, Safe Kids staff toured the CPSC testing lab located in Gaithersburg, Maryland. The CPSC, among other things, uses this lab to test thousands of consumer products to ensure that they comply with existing voluntary or mandatory standards, or to determine whether or not they pose an unreasonable risk of injury to the American public. Safe Kids staff was impressed by the commitment and expertise of CPSC lab personnel, but was surprised by the poor quality of the lab's conditions. The CPSC, to this day, still attempts to fulfill its mission with less than adequate technical facilities. We believe that the CPSC should have a lab that, at the very least, competes with those found in the private sector and that Congress should provide the funds necessary to upgrade the facility. The *Consumer Product Safety Modernization Act of 2007* does just that by providing \$20 million for the upgrade of this important facility.

C. Increasing the Civil Penalties for Violations

Safe Kids supports the increase in the civil penalty allowed by the *Consumer Product Safety Act* (CPSA), as contained in the *Consumer Product Safety Modernization Act of 2007* and passed by the House of Representatives last month (although we would like to see the amount of the cap increased given the recent cap increase passed by the Senate Commerce Committee). In its present form (under Section 20 of the CPSA), any person who knowingly engages in a prohibited act, as outlined in Section 19, is subject to a civil

penalty not to exceed approximately \$1.8 million. In some cases, and in particular when larger companies are involved, the \$1.8 million cap may not be enough of an economic deterrent to prevent the company from engaging in an unlawful act. For example, a company that has \$50 million worth of product in the marketplace may be willing to incur the civil penalty instead of reporting a defect or injury as required under Section 15 in hopes of avoiding a recall (failing to report any information required by Section 15(b) is a prohibited act under Section 19 and is subject to a civil penalty). Safe Kids has long advocated for an increase in the civil cap to an amount that better represents a deterrent. We support the provision in the *Consumer Product Safety Modernization Act of 2007* that would increase civil fines for all statutes under the CPSC's jurisdiction.

D. Restoring the CPSC to a Five-Member Commission

The *Consumer Product Safety Modernization Act of 2007* contains a provision that triggers an existing Agency authorization by expanding the Commission to five Commissioners, as opposed to the current membership of three Commissioners. The bill's sponsors feel that the Commission can function more effectively with a full complement of members. Safe Kids agrees; an Agency with five members makes for a much more vibrant institution and would promote active discussion, compromise and even dissent when necessary. We can see that energy, and I believe effectiveness, in another Agency under this Subcommittee's jurisdiction – the Federal Trade Commission (FTC). Due in large part to its full complement of Commissioners (and its adequate budget), the FTC, on the whole, effectively serves its mission by protecting consumers from deceptive practices and preserving a competitive marketplace.

A five member Commission would also allow the President and Congress to expand and diversify the expertise of the CPSC through the nomination and confirmation process. For example, the CPSC could be comprised of the following:

- A Commissioner with a legal background;
- A Commissioner with experience in human factors;
- A Commissioner with knowledge about children and how they interact with products;
- A Commissioner with experience in certain risk areas, such as drowning or fires/burns; and
- A Commissioner with a background in product design and engineering.

This is, by no means, a recommendation from Safe Kids as to who should be part of the Commissioner panel, but more illustrative of the opportunities that a five member Commission can present to the overall Agency structure as well as diversification. The diversification of expertise can be seen at the National Transportation Safety Board

whose Board Members have individual, and therefore, collective knowledge in the fields of aviation, railway and boating.

Safe Kids does, however, caution the Subcommittee that expanding the Commission by two members would also result in the need for additional budget resources for staffing, office space and travel. We believe that the budget relief provided in the *Consumer Product Safety Modernization Act of 2007* should be used first to improve overall Agency core functions – such as increasing recall effectiveness, staffing, marketplace policing and conducting enhanced public education initiatives – **not** using funds to augment the number of Commissioners. While we support the expanded Commission, Safe Kids believes that there other more pressing matters that need to be addressed first before doing so. The *Consumer Product Safety Modernization Act of 2007* addresses that concern by authorizing the expansion only at the end of FY 2010 after the CPSC budget reaches \$90 million and presumably after it has improved its critical core functions.

E. Enhancing Product Recall Effectiveness

There are many provisions in the *Consumer Product Safety Modernization Act of 2007* that would enhance the effectiveness of product recalls and improve the strength of the CPSC compliance staff at the recall negotiating table with manufacturers:

1. Elimination of the Unfettered Election of Remedies Provision in Section 15 of the Consumer Product Safety Act

The *Consumer Product Safety Modernization Act of 2007* eliminates the unfettered “election of remedies” provision contained in Section 15 of the CPSA. Safe Kids believes this provision unnecessarily handcuffs the CPSC’s compliance staff when they are negotiating a corrective action plan.

Presently, once the Commission determines that a product distributed in commerce presents a substantial hazard and that remedial action is required to serve the public interest under Section 15 of the CPSA, the CPSC may order the manufacturer of the dangerous product to elect (at the product manufacturer’s discretion) to either:

- Bring the merchandise into conformity with requirements of the applicable consumer product safety rule; or
- Replace the product with a like or equivalent product; or
- Refund the purchase price (less a reasonable allowance for use).

(Consumer Product Safety Act, Section 15d)

This discretionary election may not always serve the public interest. For instance, if the CPSC is recalling a \$75 toaster that poses a serious electrocution or fire and burn hazard, the manufacturer, once ordered to remedy, may elect to refund the purchase price less a reasonable allowance for use. The refund on a toaster that has been in the marketplace for five years may have a refund value of \$10. This refund may not be a motivating enough factor to encourage the consumer to remove the dangerous product from their household. In this case, the public may be better served by a different remedy – such as receiving a replacement item that is of similar quality or having the recalled product repaired. Safe Kids believes that CPSC compliance officers should ultimately decide what constitutes an appropriate remedy given the totality of the circumstances. The House bill does just that by allowing the CPSC to “approve” the recall remedy plan tendered by the manufacturer. We, therefore, support the change to Section 15 of the enabling statute in the *Consumer Product Safety Modernization Act of 2007* that empowers the CPSC to police the manufacturer’s elected remedy option.

2. Product Tracking

The *Consumer Product Safety Modernization Act of 2007* also contains a provision that would require manufacturers of children’s products to place distinguishing marks on both the products and packaging that will enable the consumer (and retailer) to easily identify whether or not the item has been recalled. This requirement will make it much easier for consumers to quickly identify if a certain product has been recalled and hopefully return or dispose of the item in a timely fashion. Safe Kids supports this sound policy provision.

Historically, recall rates are quite low and much of the problem can be attributed to consumers not even being aware of the recall itself. Recall ineffectiveness also stems from consumers not being able to *easily* determine whether or not the product in their possession is the recalled one. Safe Kids notes that the bill requires the manufacturer to put the distinguishing marks on both the product itself and its packaging, when feasible. Safe Kids believes that the distinguishing marks – when at all possible – should be permanently stamped on the product itself so that the tracking information is present throughout the lifespan of the item.

In addition, Safe Kids recommends that all recall notices should highlight the distinguishing marks on the product. The simple existence of the marks is not enough – the recall notices need to incorporate color pictures of where the marks are on the products (or its packaging) as well as any graphics to help the consumer/parent/caregiver determine if there is a recalled product in their home. The CPSC recently released “A Consumer’s Guide to the Magnetix Building Set Recall”; this is a great example of the effective use of images, distinguishing marks and other graphic elements to convey safety information.

3. Support for the Danny Keysar Child Product Safety Notification Act (H.R. 1699)

Section 104 of the *Consumer Product Safety Modernization Act of 2007* includes an effective tool (product registration cards) that would help improve customer notification and, therefore, recall success rates. The legislation incorporates the *Danny Keysar Child Product Safety Notification Act* (H.R. 1699), which recently passed the House of Representatives, and would direct the CPSC to require manufacturers of certain children's "durable products" (like cribs, playpens, high chairs and strollers) to provide consumer product registration cards in order to help facilitate the recall process. This bill was recently unanimously approved by the full House Energy and Commerce Committee and Safe Kids applauds the sponsors for including the legislation in the *Consumer Product Safety Modernization Act of 2007*. Registration cards, in some circumstances, can be an important tool to help consumers become aware of potentially dangerous products in their home by allowing the manufacturer of a recalled product to directly notify the purchaser of the product about the recall and the remedial action warranted. We note, however, that the *Danny Keysar Child Product Safety Notification Act* would not require registration cards for all children's products; the requirement would only apply to products inextricably interwoven in a child's daily life. This tailored use of registration cards makes the *Act* very practical and targeted to only those products that, if they contain a design hazard, pose significant exposure to death or injury.

Section 104 also contains an interesting provision that would require the CPSC to examine and assess the effectiveness of any voluntary standard relating to the durable infant and toddler products addressed in the *Danny Keysar Child Product Safety Notification Act*. If they are determined to be effective, then the Agency would be required to convert those voluntary standards into mandatory safety regulations. If not, then the CPSC would improve them by issuing more stringent product safety rules. This provision would not only help ensure that these special products are safe, but also, by converting the voluntary standard to a product safety rule, trigger the third-party testing and certification requirements of Section 102. Safe Kids does, however, caution the Subcommittee that this provision of the bill, especially in light of its short time frame for implementation, could be a serious drain on Agency resources and staff time. The *Danny Keysar Child Product Safety Notification Act* addresses 12 "durable products". This is a significant amount of rulemaking.

4. Authority to Re-Visit a Negotiated Corrective Action Plan

The *Consumer Product Safety Modernization Act of 2007* contains a much needed provision that enables the Agency and in particular, its compliance staff, to revisit an implemented recall corrective action plan that has not been effective. This is a particularly important tool for those recalled products that have a serious hazard

and it can be determined that the recall effectiveness rates are insufficient (i.e., cribs that pose a strangulation or a playpen that unexpectedly collapses). Posed with this scenario, the CPSC can require the manufacturer to more aggressively re-publicize the recall with posters, paid advertising or an additional video news release, among other things.

The *Consumer Product Safety Modernization Act of 2007* also allows the CPSC to revoke completely a negotiated corrective action plan if it determines that a manufacturer or distributor has failed to substantially fulfill its action plan obligations. This is also a provision we support. We do believe, however, that “failing to comply substantially with [manufacturer] obligations under [a recall] action plan” should be considered a prohibited act under Section 19 of the CPSA. This would, in turn, trigger the authority to administer the civil penalties provision. Exposure to civil penalties provides an extra incentive for manufacturers/distributors to aggressively comply with an action plan in the first place.

5. Enhanced Notice Ordered under Section 15(c)

Section 209 improves the Section 15(c) notice by allowing the CPSC, after a hearing and order under Section 15(f), to require a manufacturer, if appropriate, to provide enhanced public notification as part of a mandatory recall of a product determined to be a “substantial product hazard”. Although we believe that the CPSC compliance staff already has this authority once a mandatory recall is ordered, the provision does make it crystal clear that that implementation of a recall could require these notice efforts (website, radio and television notices). We also believe that the specificity provided by Section 209 will assist the CPSC staff in negotiating a voluntary recall by informing the manufacturer that these enhanced notice techniques are available to staff and may be required.

F. Third-Party Testing/Ban on Children’s Products Containing Lead

The *Consumer Product Safety Modernization Act of 2007* would require third-party testing to ensure that children’s products comply with any applicable product safety standards. It would also virtually ban lead in children’s products, children’s jewelry and consumer use paints. Associations, manufacturers, retailers and many consumer groups all agree that these are two concepts whose time has come. Add Safe Kids to this long list.

We also have two concepts to add to the legislation. First, Safe Kids believes that the testing required by Section 102 of the *Consumer Product Safety Modernization Act of 2007* should be done throughout the manufacturing process and on several lots to ensure that all products that may find themselves in the marketplace comply with applicable safety standards.

Second, the Senate's version of the CPSC reform act contains a provision that requires the Government Accountability Office to conduct periodic audits of third-party testing labs. The audit procedure described in the Senate's *CPSC Reform Act of 2007* addresses the expertise and qualifications of third-party testing labs. Safe Kids believes that this audit protocol should be added to the House bill and, in fact, expanded to include a periodic assessment of the financial independence of these facilities. This will ensure that the certification labs are truly and continuously qualified and independent.

G. Labeling Requirement for Catalog and Internet Sales of Toys and Games

Safe Kids supports the provisions of Section 105 that would require manufacturers of certain children's products to label and, therefore, warn potential online/catalog purchasers of the small parts in the product and the associated choking hazard. Present law requires those warnings at the point of purchase on packaging on toys sold at "bricks and mortar" stores. This law gives potential toy buyers important safety information before they actually purchase in order to aid in appropriate, safe product selection. With the advent of internet sales and the expansion of catalog sales, Safe Kids believes that it makes sense to afford those consumers the same protection and education received when toys are purchases at more traditional retail sites.

IV. Conclusion

As product-related injuries still exist and can be prevented, the CPSC is needed now more than ever to protect consumers, families, and children. Safe Kids commends Chairman Rush and Ranking Member Stearns, along with the other sponsors, for their introduction of the *Consumer Product Safety Modernization Act of 2007* and we look forward to working with this Subcommittee on any efforts designed to protect children from product-related hazards.